

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ST. PAUL

In re the License of C.L. Hinze, Inc.
d/b/a Chuck's Bar
901 Payne Avenue, St. Paul

**FINDINGS OF FACT,
CONCLUSIONS,
RECOMMENDATION,
AND MEMORANDUM**

The above-entitled matter came on for hearing before Bruce D. Campbell, Administrative Law Judge, commencing at 9:30 a.m. on Friday, July 7, 1995 in Room 41 of the City Hall in St. Paul, Minnesota. The hearing was continued and reconvened at 9:30 a.m. on July 13, 1995. The hearing took one day. The parties were directed to submit final arguments in writing. The record closed when the Administrative Law Judge received the Licensee's final argument on July 31, 1995.

Janet Reiter, Attorney, Office of the City Attorney, 400 City Hall, 15 West Kellogg Boulevard, St. Paul, Minnesota, 55102, appeared on behalf of the City of St. Paul (City).

Douglas Meslow, Attorney, Suite 100 First Bank Building, 4700 Clark Avenue, White Bear Lake, Minnesota, 55110, appeared on behalf of the Licensee C.L. Hinze, Inc. (Licensee).

This Report is a recommendation, not a final decision. The St. Paul City Council will make the final decision after a review of the record. The Council may accept, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to § 310.05(c-1) of the St. Paul Legislative Code, the Council shall provide the licensee an opportunity to present oral and written argument alleging error in this Report, and to present argument relating to any action recommended in this Report. The licensee should contact Nancy Anderson, Council Secretary, Room 310, St. Paul City Hall, to ascertain the procedure for filing such argument or appearing before the council.

STATEMENT OF ISSUES

1. Whether in the early morning hours of April 17, 1995, the owner of Chuck's Bar assaulted a patron.
2. Whether any adverse action should be taken against the Licensee for the April 17, 1995 incident.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. C.L. Hinze, Inc. is a Minnesota corporation doing business as Chuck's Bar at 901 Payne Avenue, St. Paul, Minnesota. Licensee presently holds restaurant, entertainment, cigarette, and on-sale liquor licenses from the City of St. Paul.

2. The St. Paul License, Inspection and Environmental Protection division ("LIEP") has taken adverse action against the Licensee on two prior occasions within the last two years.

3. On December 9, 1993, by City Council Resolution #93-1825, the City suspended for one day all of the licenses held by Licensee as a result of the Licensee's sale of liquor to an obviously intoxicated person. (Exhibit 5.)

4. On April 20, 1994, by City Council Resolution #94-523, the City suspended for fifteen consecutive days all licenses held by Licensee as a result of the Licensee's refusal to allow entry to police officers responding to a 911 call. (Exhibit 4.)

5. On May 18, 1994, the St. Paul City Council renewed the licenses of C.L. Hinze, Inc. with several conditions including the requirement that Licensee post notices and enforce rules prohibiting gang colors, drugs, and weapons in the bar; loitering in the parking lot; and noise in the neighborhood. (Exhibit 6.)

6. Kristine Kedrowski and her husband Daryl Kedrowski spent part of April 16, 1995 at the home of Mr. Kedrowski's mother. While there, Mr. and Ms. Kedrowski each consumed several beers. Ms. Kedrowski testified at the hearing that she drank approximately four beers. Mr. Kedrowski testified that he drank approximately six beers.

7. In the late evening hours of April 16, 1995, Mr. and Ms. Kedrowski went to Louie's Bar. Louie's Bar is located up the street from Chuck's Bar on Payne Avenue in St. Paul. While at Louie's Bar, Ms. Kedrowski drank two beers and engaged in loud behavior. Sometime around midnight, the bartender informed Ms. Kedrowski that he would not serve her any more alcoholic beverages. Ms. Kedrowski knew she had had enough to drink, but she was "having a good time" and did not want to stop.

8. Ms. Shirley Ehnstrom was the waitress at Louie's Bar the night of April 16, 1995. Ms. Ehnstrom is a long time friend of Mr. Chuck Hinze, the owner of Chuck's Bar.

9. Upon being "cut off" at Louie's Bar, the Kedrowskis left and proceeded to Chuck's Bar. The Kedrowskis entered Chuck's Bar at approximately 12:10 a.m. Mr. and Ms. Kedrowski sat at the bar. Ms. Kedrowski ordered and was served a beer by the bartender, Ms. Judy Nordstrom. Mr. Hinze was seated at the end of the bar, drinking an alcoholic beverage.

10. Ms. Judy Nordstrom works as a bartender at Chuck's Bar approximately 11-14 hours a week. Ms. Nordstrom also works as a waitress at Louie's Bar and she is acquainted with Ms. Ehnstrom.

11. Shortly after being served her beer, Ms. Kedrowski began talking loudly about being cut off at Louie's Bar. Ms. Nordstrom determined that Ms. Kedrowski was intoxicated and she asked Ms. Kedrowski for her beer back. Ms. Kedrowski did not give her beer back.

12. Ms. Kedrowski admits that she was intoxicated while at Chuck's Bar.

13. A verbal exchange took place between Ms. Kedrowski and Mr. Chuck Hinze. Mr. Hinze called Ms. Kedrowski a "fat, fucking bitch." Ms. Kedrowski responded by raising her middle finger to Mr. Hinze, or "flipping him off." Mr. Hinze told Ms. Kedrowski to leave the bar. Ms. Kedrowski remained seated. Mr. Hinze came up behind Ms. Kedrowski and grabbed her, placing both of his hands around her neck, in an attempt to physically remove her from the bar. Mr. Kedrowski pushed Mr. Hinze away from Ms. Kedrowski. Once separated from Mr. Hinze, the Kedrowskis left Chuck's Bar and went home.

14. During the confrontation with Mr. Hinze, Ms. Kedrowski sustained a scrape on her ankle.

15. Approximately one and one-half hours after leaving Chuck's Bar, Mr. and Ms. Kedrowski called the police to report the incident. Police Department staff instructed the Kedrowskis to come down to the police station to file a report.

16. Officer Craig Gromek, of the St. Paul Police Department took a report from the Kedrowskis regarding the incident at Chuck's Bar. Officer Gromek noted the scrape on Ms. Kedrowski's ankle. Officer Gromek did not notice any marks on Ms. Kedrowski's neck. Officer Gromek believed the Kedrowskis were telling the truth about the incident. (Exhibit 3.)

17. No further investigation regarding this incident was carried out by the St. Paul Police Department, and no criminal charges were brought against Mr. Hinze as a result of this incident.

18. On June 13, 1995, the City Attorney's Office served Mr. Chuck Hinze with a Notice of Hearing scheduled for July 7, 1995. (Exhibit 1.)

19. On July 6, 1995, Mr. Chuck Hinze and a Mr. Jose ("Jesse") Koehler drove out to Ms. Kedrowski's apartment building. Mr. Koehler is approximately 6 feet 2 inches in height, and he weighs approximately 240 pounds. Ms. Kedrowski had not been in contact with Mr. Hinze since the incident, and she did not invite Mr. Hinze or Mr. Koehler to meet her regarding this matter.

20. Mr. Koehler had with him a typewritten "release" form he prepared for Ms. Kedrowski to sign. The release form refers to the April 17, 1995 incident as a "gross

misunderstanding", and it petitions the Administrative Law Judge to drop the matter. Mr. Hinze brought with him at least \$500 in cash for the purpose of paying Ms. Kedrowski in exchange for her signing the release form. (Exhibit 7.)

21. While Mr. Hinze waited in the car, Mr. Koehler entered the apartment building and met Ms. Kedrowski in the lobby. Mr. Koehler presented Ms. Kedrowski with the release form and offered Ms. Kedrowski the sum of \$200 to sign it. After some discussion, Ms. Kedrowski agreed to sign the release form for \$500. Mr. Koehler went out to the car where Mr. Hinze was waiting, and returned with \$500 in cash for Ms. Kedrowski.

22. On July 7, 1995, Mr. and Ms. Kedrowski failed to appear for the hearing in this matter pursuant to subpoena. Both did appear on July 13, 1995, when this matter was reconvened for hearing. Ms. Kedrowski testified that she did not appear for the hearing on July 7, 1995, because she thought that by signing the release, this matter was settled.

23. At the hearing, Ms. Kristina Schweinler of the Department of Licensing, Inspections and Environmental Protection, recommended that the licenses of Chuck's Bar be revoked pursuant to the matrix contained in § 409.26 of the St. Paul Legislative Code. Ms. Schweinler stated that, due to Licensee's two prior violations and the seriousness of the assault at issue, revocation of the licenses is an appropriate penalty.

24. Approximately one month after Judge Campbell heard this matter, he died unexpectedly. Counsel for both parties agreed to waive their right to a new hearing and to allow another judge to render a decision based on the record. (Exhibit 10, Letter dated 9-12-95 from Janet Reiter to the Honorable Allan Klein; Exhibit 11, Letter dated 9-18-95 from Douglas Meslow to the Honorable Allan Klein.)

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The St. Paul City Council has jurisdiction of the subject matter of this hearing.
2. Proper notice of the hearing was timely given, and all relevant substantive and procedural requirements of law or rule have been fulfilled and, therefore, the matter is properly before the Administrative Law Judge.
3. Under § 310.06(b)(6)c of the St. Paul Legislative Code, conduct of a licensee which evidences a pattern of practice of violating laws reasonably related to the licensed activity from which a lack of fitness or good character can be drawn is grounds for taking adverse action against a license.

4. Under § 310.06(b)(7) of the St. Paul Legislative Code, a licensee whose activities in the licensed business caused a serious danger to the public health, safety and welfare is subject to adverse action against a license.

5. Under § 310.06(b)(10) of the St. Paul Legislative Code, a licensee who has shown by past misconduct or unfair acts of dealing: physical abuse, assaults, or violent actions done to others is subject to adverse action against a license.

6. The facts at issue in administrative hearings and contested cases must be proven by a preponderance of the evidence, unless the substantive law provides a different burden or standard. Minn. R. 1400.7300, subp.5 (1985).

7. In the instant matter, Chuck Hinze, the owner of Chuck's Bar, assaulted a patron by placing his hands around her neck.

8. Based on the April 17, 1995 incident, the St. Paul City Council is authorized to take adverse action against the licenses of Chuck's Bar pursuant to §§ 310.06(b)(6)(c), 310(b)(7), and 310(b)(10) of the St. Paul Legislative Code.

9. There is no specific provision under the penalty matrix in § 409.26 of the St. Paul Legislative Code governing assaultive behavior. However, violations are assessed progressively tougher penalties when a licensee has committed multiple violations within a designated period of time.

10. The April 17, 1995 incident constitutes the Licensee's third violation in 30 months within the meaning of § 409.26 of the St. Paul Legislative Code.

11. The St. Paul City Council should impose a penalty lower than the revocation recommended by the Department of Licensing, Inspections and Environmental Protection. Imposition of an eighteen day suspension, the approximate average penalty for third offenses under § 409.26 of the St. Paul Legislative Code, is recommended.

12. The costs of the hearing should be assessed against the Licensee.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED:

That the St. Paul City Council suspend the licenses of C.L. Hinze, Inc., d.b.a. Chuck's Bar, for eighteen consecutive days due to the acts of owner Chuck Hinze on April 17, 1995.

Dated this 20th day of October, 1995

/s/

ALLAN W. KLEIN

Administrative Law Judge

Reported: Tape Recorded.

MEMORANDUM

The facts surrounding the April 17, 1995 incident at Chuck's Bar are largely in dispute. Both the City and Licensee called witnesses whose testimony supported their versions of the events that took place on April 17, 1995. The City maintains that Mr. Chuck Hinze assaulted Ms. Kristine Kedrowski by placing his hands around her neck. Mr. Hinze denies that he placed his hands around Ms. Kedrowski's neck, and insists that he used only that force necessary to remove Ms. Kedrowski from the bar. Mr. Hinze maintains that he placed one of his hands on Ms. Kedrowski's back, and one of his hands on her elbow in an attempt to escort her to the door.

It is the duty of the Administrative Law Judge to assess the credibility of the witnesses, and to determine which version, considering all the facts and reasonable inferences made therefrom, is the most probable. See, Even v. Kraft, Inc., 445 N.W.2d 831 (Minn. 1989); Minn. R. 1400.7300, subp.5 (1985).

The credibility of the witnesses in this matter was determined by listening to the tapes of the hearing and reviewing Judge Campbell's notes. After reviewing the entire record, the Judge finds that the City of St. Paul has established, by a preponderance of the evidence, that Mr. Hinze did assault Ms. Kedrowski by placing his hands around her neck in an attempt to remove her from the bar. The Judge agrees with the City that all three witnesses called by Licensee have an interest in seeing the Licensee avoid any penalty the St. Paul City Council may impose in this matter. Both the owner, Chuck Hinze, and the bartender, Judy Nordstrom, depend on Chuck's Bar for all or part of their economic livelihood. Ms. Shirley Ehnstrom, the Licensee's third witness, is a long time friend of Mr. Hinze.

By contrast, the Kedrowskis had nothing to gain by filing a complaint with the police department, or by appearing to testify at the hearing. Both Mr. and Ms. Kedrowski gave credible testimony consistent with the report they gave to Officer Gromek on April 17, 1995. Officer Gromek also testified that he believed the Kedrowskis were telling the truth about the incident.

In addition, an inference of guilt may be drawn from Mr. Hinze's conduct the day before the scheduled hearing. On July 6, 1995, Mr. Hinze and Mr. Jose Koehler went to Ms. Kedrowski's apartment uninvited with a prepared "release" form for her to sign. The release form petitions the Administrative Law Judge to drop the case. Mr. Hinze paid Ms. Kedrowski \$500 in exchange for her signature on the release. Mr. Hinze stated that he brought the large sum of money with him for the purpose of paying Ms. Kedrowski. Mr. Hinze indicated that he was concerned about what Ms. Kedrowski was going to say at the hearing. Although Mr. Hinze testified that he was worried that Ms. Kedrowski

may make a claim against his Dram Shop insurance, the release form makes no reference to Dram Shop claims or future claims in general.

Finally, the Licensee alleges that the City failed to investigate the incident properly before recommending adverse action be taken against his licenses. However, the fact that no further investigation was performed by the St. Paul Police Department and no criminal charges were brought against Mr. Hinze as a result of this incident, does not in any way bar LIEP from pursuing adverse action against the Licensee. Criminal and civil proceedings are conducted under different burdens of proof and are conducted for different purposes. See, In re Kaldahl, 418 N.W.2d 532 (Minn. App. 1988). Pursuant to § 310.05(c) of the St. Paul Legislative Code, the hearing provided the Licensee with the opportunity to present evidence and argument to rebut the statements of the City's witnesses and to challenge the recommendation of the LIEP.

While it is true that Ms. Kedrowski was intoxicated and engaged in loud behavior at Chuck's Bar, her demeanor did not justify Mr. Hinze's assaultive conduct. Mr. Hinze's behavior evidences a pattern of conduct on the part of the Licensee of failing to comply with laws related to the licensed activity from which an inference of lack of fitness or good character may be drawn. However, the LIEP's recommendation to revoke all licenses held by the Licensee in this matter seems too severe. The City has not presented adequate justification for deviating from the average eighteen day suspension for third offenses found in the penalty matrix in § 409.26 of the St. Paul Legislative Code. Therefore, an eighteen day suspension of all licenses held by the Licensee is recommended.

A.W.K.